IN THE SUPREME COURT
OF THE UNITED STATES

October Term, 1979

No. 79-114

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SUPREME COURT, U.S.

ALLAN DORSEY ROGERS, JR.
and
ALLAN DORSEY ROGERS, SR.
Petitioners

vs.

STATE OF MARYLAND
Respondent

PETITION FOR CERTIORARI
TO THE COURT OF ~~APPEALS~~ Special APPEALS OF MARYLAND

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Now comes Allan Dorsey Rogers, Jr. and Allan Dorsey Rogers, Sr., by their attorney Robert S. Sherman, and prays that this Honorable Court issue a Writ of Certiorari to the Court of Appeals of Maryland. This Honorable Court has jurisdiction pursuant to 28 U.S.C. Sec. 1257 and as further grounds Petitioners state:

1. That the Petitioner, Allan Dorsey Rogers, Jr., was tried, with the aid of a jury, in the Circuit Court for Baltimore County and a verdict of guilty of Assault with the Intent to Murder, two counts of Assault and Unlawful use of a Handgun in the Commission of a Felony was entered on January 23, 1978.

2. That the Petitioner, Allan Dorsey Rogers, Sr. was convicted at the same trial by the same jury, on the same date, of two counts of Assault, Resisting Arrest and Assault with the Intent to Prevent Lawful Apprehension.

3. Said decision was appealed to the Court of Special Appeals of Maryland and an unreported per curiam decision was rendered by said court on February 5, 1979 affirming the lower court.

4. That the Mandate of the Court of Special Appeals of Maryland was issued on March 7, 1979.

5. On or about April 26, 1979 the Court of Appeals of Maryland denied a Petition for Certiorari.

6. On or about May 8, 1979 Petitioners filed a Petition for Post Conviction Relief in the Circuit Court for Baltimore County

(miscellaneous case numbers 6822 and 6830 respectively). These Petitions for Post Conviction Relief are still pending before the Circuit Court for Baltimore County.

7. That the first question presented for review is whether the trial judge's sua sponte comment to the jury, that the self serving extrajudicial statement pertained to only one of the Defendants although that statement inculpated a co-defendant, constituted a violation of the confrontation clause of the sixth amendment of the U.S. Constitution as interpretate by Bruton v. U.S. 391 U.S. 123 (1968), where that comment was made during a joint trial in which the Defendants were represented by the same counsel. In affirming the conviction the Court of Special Appeals of Maryland maintained that Bruton supra was not applicable since defense counsel had the opportunity to cross examine the declarant. Petitioners aver that it is desirable and in the public interest that this case be reviewed by this Honorable Court since it appears that such cross examination is barred by Maryland Rule DR7-101 (a) (3) (of the Code of Professional Responsibility) which states that a "lawyer should not intentially prejudice or damage his client during a course of professional relationship."

8. The second issue presented for review is whether the State, by withholding evidence favorable to the Petitioners, after Petitioners made a request for same, violated Petitioners right to due process of law where the evidence withheld was

material to the question of guilt or innocence of the Appellants. In regard to this issue the Petitioners maintain that there were three peices of evidence improperly suppressed by the State. The constitutional issue centers around an improperly suppressed signed statement and offense report of a police officer which clearly showed the absence of any emergency situation which would have justified a forced entry into the home of Allan Rogers, Jr. Petitioners maintain that had this statement been available to them they could have raised the issue of whether the entry into the home was unreasonable under the Fourth Amendment. At trial, this issue could not be raised since the defense had no indication that the entry into the home (not the arrest of Rogers, Jr. on an unrelated charge) was unreasonable. Affirming the conviction, the Court of Special Appeals of Maryland maintained that there was no common law right to resist an illegal arrest based upon a warrant issued by a judicial officer. However, the defense which the Petitioners could have raised would have gone to the illegality of the entry into the house not the illegality of the arrest on the unrelated charge.

9. The constitutional provisions which are involved in this case are as follows:

a. IV AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES

The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, shall not be violated, and no warrants

shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

b. V AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

No person shall be held to answer for a captial, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

c. IV AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

d. XIV AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES

Section 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

10. The facts material to the consideration of the questions presented are as follows:

Allan Dorsey Rogers, Jr. (hereinafter Jr.) contends that on January 26, 1977, his wife, Wanda, had "abducted" his minor daughter, Karen. Upon learning that the child was at the home of his father-in-law, he went to the later's home in order to obtain the return of his daughter. Upon arrival, he knocked at the front door, and when he received no answer, he went around to the rear door. While knocking on the glass window at the back door, he "accidentally" broke the window. Providentially, this permitted Jr. to reach in, unlock the door, enter, and take his daughter, who had been sitting with his sister-in-law at the table. He left a $5 bill on the table and told his sister-in-law that the money was for the repair of the broken window. He then took his daughter to a friend's house for safe-keeping. Jr. thereafter called his father, Allan Dorsey Rogers, Sr. (hereinafter, Sr.)

and asked him to come to his apartment so that Jr. could clear out his guns and clothing as he feared the action his father-in-law might take upon learning that he had removed Karen from the father-in-law's house.

Sgt. Bruce McGuire (hereinafter, McGuire) of the Baltimore County Police Department testified that in the early evening of January 26, 1977, he went to Jr.'s home as a result of information he received from the police radio dispatcher that Jr. (who resided at the address given) was wanted for a breaking and entering in Anne Arundel County; Jr. was not at home at this time. Several hours later (about 9:00 p.m.) on that same date, when McGuire received information that Jr. and another man (later discovered to be Sr.) had gone into Jr.'s house, McGuire and three other Baltimore County officers met at that address. Two of the officers remained downstairs, and McGuire and Officer Lengel went upstairs to the Rogers apartment. McGuire was armed with a shotgun because an earlier broadcast had indicated that Jr. was armed with a .357 magnum revolver.

Sgt. McGuire rapped on the door of the apartment and Sr. answered. The latter was advised that the police were looking for Jr. on a breaking and entering charge and that they had reason to believe he was in the apartment. Sr. refused permission to enter unless the officers had a search warrant, and a scuffle ensued between him and the two police officers. After warning Sr., the officers arrested him for hindering an officer. McGuire

requested the two officers who had remained downstairs to take Sr. to the police station, whereupon Sr. stated that he was going inside to get his coat and the officers were not to follow. McGuire and one of the other officers attempted to detain Sr., and another scuffle ensued. The record gives varying versions as to who struck whom in the scuffle, but it is clear that at this point Jr. appeared from the bedroom of the apartment armed with a revolver which the officers contended was pointed directly at them. Shots were then fired, at least one of which came from the gun held by Jr. and Jr. was struck in the hand by a bullet. The two Rogers were then subdued and arrested. In addition to the injuries suffered by Rogers, at least two of the officers sustained injuries.

11.. The matters sought to be reviewed herein were first raised by the Petitioners in a Motion for a New Trial at the conclusion of the trial in the Circuit Court for Baltimore County. The trial Judge denied the Motion for New Trial and an appeal to the Court of Special Appeals of Maryland was timely filed thereafter also raising the issues sought to be reviewed herein. Subsequent to the Court of Special Appeals of Maryland affirming the decision of the lower court the issues sought to be reviewed herein were raised in a Petition for Certiorari which was filed in the Court of Appeals of Maryland.

12. Petitioners believe and therefore aver that the Court of Appeals of Maryland has decided the issues raised herein in a way probably not in accord with decisions of this Honorable Court. Specifically Petitioners contend that in reaching the decision to affirm the trial courts decision, the Court of Special Appeals of Maryland and the Court of Appeals of Maryland ignored this Court's holding in Bruton v. U.S., 391 U.S. 123 (1968) and this Court's holding in Brady vs. Maryland, 373 U.S. 83.

Respectfully submitted,

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